

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

BTI SECURITY, INC.

Employer,

and

Case 05-RC-239933

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 1994 a/w
UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION
Petitioner.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (“the Act”), as amended, a hearing was held on May 1, 2019, before a hearing officer of the National Labor Relations Board (“the Board”). The Petitioner, United Food and Commercial Workers Union Local 1994 affiliated with United Food and Commercial Workers International Union (“the Petitioner”) filed the petition seeking to represent a unit of “all full-time and part-time guest screeners working under Montgomery County Contract number 1064900” (“the Contract”). The employer of the employees in the petitioned-for unit is BTI Security, Inc. (“the Employer” or “BTI Security”). The petition reflects that there are approximately 55 employees in the petitioned-for unit.

The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.¹ The parties further stipulated, and I find, that

¹ The parties stipulated, and I find, that the Employer, BTI Security, Inc. is a corporation with an office and place of business in Rockville, Maryland, has been engaged in the business of providing security services to private and government entities. In conducting its operations during the 12-month period ending March 31, 2019, the Employer performed services valued in excess of \$50,000 in States other than the State of Maryland.

there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar to the petition. Finally, the parties stipulated both that the Petitioner currently admits non-guard employees as members or is affiliated directly or indirectly with an organization that admits employees other than guards as members, and that, as such, the Petitioner is not qualified to represent a unit of guards within the meaning of Section 9(b)(3) of the Act.

I. ISSUE, POSITIONS OF THE PARTIES, AND DETERMINATION

The sole issue concerns the composition of the petitioned-for unit, specifically, whether the employees in the job classification of guest screener, the only classification sought by the Petitioner, are guards within the meaning of Section 9(b)(3) of the Act. If so, the Petitioner concedes it is not qualified to represent the unit.

Though the Petitioner uses the job title guest screener in its petition, the Employer contends that it does not employ any employees in such a classification. Instead, the Employer maintains that all the employees working under the Contract hold the job title of unarmed security officer (“USO”). There is no record evidence establishing that the position of guest screener exists, and the Petitioner seems to concede this point by omitting use of that title in its brief. At most, as explained below, it appears that the employees at issue in the petition perform some duties, in addition to many others, related to greeting and screening individuals seeking access to the various facilities included in the Contract. Nonetheless, the parties appear to refer to the same group of employees, regardless of their contentions about the name the Employer uses to refer to those employees. For purposes of consistency and clarity, I will use the term USO herein when referencing the employees at issue in this petition.

The Employer maintains that all of the USOs have the same duties and that the central job function of USOs is to perform guard duties, even though USOs may sometimes complete administrative tasks. The Petitioner argues, in a policy- and legislative intent argument, that the USOs should not be considered guards under the Act because the individuals working in the facilities covered by the Contract are Montgomery County employees who do not have the right to strike, and because, according to the Petitioner, the USOs do not enforce rules against fellow employees. Based on the evidence received at the hearing, and the arguments made by the parties in each of their post-hearing briefs, I conclude that the employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, because the Petitioner concedes it cannot represent a unit of guards, I am dismissing the petition.

II. FACTS

a. The Employer

The Employer provides security services to private and government entities, including at approximately 20 locations in Montgomery County. According to the Employer, there is only one type of position—USO—that works under the Contract. The Employer asserts that there are 102 USOs on the Contract.² No evidence was produced at the hearing indicating any employee is employed as a screener only.³ All of the USOs on the Contract report to the same supervisors,

² Neither party fully addressed the substantial discrepancy in the number of employees in the petitioned-for unit as reflected on the petition, 55, versus that asserted by the Employer, 102. The Petitioner did not establish that its claimed unit of 55 employees is in any significant way different than the other 47 employees employed by the Employer. However, in light of my decision to dismiss the petition, the confusion related to this issue is moot.

³ While the Statement of Work requires that the Employer provide “entry level screening personnel,” there is no record evidence suggesting that any employee is responsible for that duty only, and the record contains no evidence indicating that anyone working for the Employer on the Contract holds a position with that title. In fact, uncontradicted testimony from Project

who may rotate at times among the various locations on the Contract. The supervisors all report to Project Manager David Williams. According to Williams, all of the USOs earn the same rate of pay.

b. Unarmed Security Officers

i. Duties

Each of the USOs is trained to perform a variety of duties that need to be performed at the various sites on the Contract. USOs staff the roughly 41 posts within the approximately 20 locations, perform rounds to look for violations or security risks, handle safety tasks and concierge duties,⁴ work in Security Center Operations monitoring security cameras for suspicious activity, and screen guests either with a magnetometer, hand-held wands, or both. Each of the USOs are qualified to perform all the various duties and are assigned tasks based on availability and the Employer's need. Some sites only have one USO, and that USO performs all the tasks necessary at that site. Other sites have several USOs, and those USOs may rotate tasks based again on the Employer's need and the employees' availability. Sometimes, USOs work at sites or in buildings other than where their main assignment is located. Only five of the Employer's approximately 41 posts include a screening function.

The purpose of screening individuals who seek access to a building is to prevent weapons from entering the building. The screening process generally requires visitors to walk through a magnetometer while a USO monitors the magnetometer to determine if further investigation is

Manager Williams indicates that no employee performs duties related to screening guests for more than four to five hours at a time.

⁴ Safety tasks and concierge duties were mentioned at the hearing. However, the record contains no detailed description of what these duties entail.

necessary. USOs also use handheld wands to examine visitors. Generally, a USO is only assigned this task for about four to five hours at a time. USOs control access to the buildings for visitors, and in at least one case, employees of Montgomery County.⁵

USOs are responsible for enforcing the Employer's rules at the facilities where they work, for example by telling visitors they cannot carry weapons into the Montgomery County buildings and by asking people to refrain from using profanity.

Employee Shirley McCarthy testified that some USOs escort non-custodial parents when they have parental visits scheduled. This occurs because the presence of a security guard is a condition of the non-custodial parent's right to the visit, and the USO fills that role.

At times, USOs monitor video surveillance equipment, looking for suspicious activity. If any such activity is observed, the USO informs the facility manager. McCarthy testified that she has used the surveillance cameras in her facility to investigate property theft, and to collect information in anticipation of an insurance investigation when there was an accident in the parking lot.

USOs patrol the interior and exterior of their assigned buildings for the purpose of finding safety issues or breaches.⁶ McCarthy testified that she confiscated a knife from an individual who wished to gain entry to a site where weapons are not permitted. However, the State of Maryland

⁵ Williams testified that the employees in the Montgomery County Council office building are processed through security in the same manner as visitors.

⁶ The Employer's statement of work includes a description of patrol duties. They include inspecting facilities, grounds, and parking areas to deter, detect, and report any security breach or safety hazard as determined by post orders; investigating and reporting possible security breaches; enforcing all regulations; and answering requests for information from visitors.

does not allow unarmed guards to apprehend anyone on suspicion of a crime. Instead, the USOs are trained to call the police, if necessary.

USOs fill out incident reports which are transmitted to the USOs' supervisor, or sometimes to a Montgomery County facility manager, or to the police. USOs report many types of incidents, including theft, car accidents in the parking lot, and confiscation of weapons. USOs also create activity logs, which are also transmitted to the USOs supervisor, or facility managers.

ii. Training and Qualifications

The licenses and certifications required to be a USO include a Maryland unarmed guard card,⁷ and a certification in first aid and CPR for both adults and children, as well as the use of an automated external defibrillator.

The USOs receive site-specific training on the nomenclature related to the equipment USOs may need to use, as well as specific orders for the post to which USOs are assigned.

The statement of work provided by the Employer requires that the USOs be trained in conducting security patrols, safety and fire prevention, and dealing with difficult and disruptive persons, among other training requirements.

⁷ Though the record is incomplete regarding this license, it is likely that this portion of the record refers to a State of Maryland Security Guard Certification. The State's government website Maryland.gov, notes that, "To qualify for a State of Maryland Security Guard Certification, an applicant shall be an individual who is a current employee of, or a current applicant for employment with a licensed security guard agency and be of good moral character and reputation. Applicants must also meet any standards set by the Maryland State Police." ("Security Guard Certifications." *Maryland.gov*, <https://mdsp.maryland.gov/Organization/Pages/CriminalInvestigationBureau/LicensingDivision/ProfessionalLicenses/SecurityGuardCertifications.aspx>. Accessed June 6, 2019).

iii. Attire and Tools of the Job

The USOs wear light blue shirts that bear a badge that indicates the USO works with Montgomery County police. The uniform shirt also includes a BTI Security patch on the right arm, which says “protective services.” USOs wear dark blue slacks, but do not wear hats. They do not carry guns or mace. Each USO wears a name tag that indicates his or her first initial and last name. USOs are equipped with radios. The USOs are issued access cards that are used to enter the various buildings and carry badges that allow entry into the doors within the buildings.

III. ANALYSIS

Under Section 9(b)(3), a unit is not appropriate “if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.” In the instant case, if employees in the petitioned-for unit are guards within the meaning of Section 9(b)(3), the Petitioner cannot represent the petitioned-for unit because the Petitioner represents non-guard employees. As noted above, the Petitioner concedes this point.

To be a guard within the meaning of Section 9(b)(3), an employee must enforce against employees and other persons rules to protect the property of the employer's premises. *Petroleum Chemicals*, 121 NLRB 630 (1958). The Board evaluates whether employees are guards in terms of whether they carry out “traditional police and plant security functions.” *Boeing Co.*, 328 NLRB 128, 130 (1999). These functions include the enforcement of rules, conducting of patrols to discover rules violations or other security concerns, the use of weapons, security training, monitoring and controlling access to property, and “wearing guard-type uniforms or displaying other indicia of guard status.” *Id.* An employee is a statutory guard when guard functions constitute more than “a minor or incidental part of their overall responsibilities.” *Id.* In weighing

guard and non-guard responsibilities, the Board assesses the “primary function” of an employee. *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995). For example, the Board has found employees to not be guards when their “receptionist or clerical duties” predominated over their guard responsibilities. *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); see also *Tac/Temps*, 314 NLRB 1142, 1143 (1994).

The Board has analyzed the guard status of employees in situations involving receptionists or other employees providing similar hospitality and greeting services. In *Hoffman Security*, 302 NLRB 922 (1991), the employees at issue staffed reception desks in a hospital. From their desks, the employees greeted entrants and offered information and directions. They monitored a system of cameras, but they did not screen visitors’ persons or items for security threats. Rather, the employees were to “observe and report irregularities.” The Board held that the employees in question were not statutory guards. *Id.* at 922–23. Although the Board noted that visitors often proceeded past the desks “unobserved,” the Board also distinguished prior cases on the basis that the employees did not “make rounds,” had no “authority to take independent action in the event of a disturbance,” and did not screen or inspect visitors. *Id.* In another case, *Wolverine Dispatch*, 321 NLRB 786 (1996), the Board again found that the employees at issue were not guards. The two employees at issue performed a number of clerical duties, but also controlled access to their employer’s secured lobby by responding to the doorbell, asking the person seeking admission the purpose of their visit, and determining the validity of that purpose. *Id.* at 797. The employees also were ordered to set off an alarm if a visitor drew a weapon in the lobby area. *Id.* at 799. Despite these duties, the Board found that any “guard-like duties” they performed were “incidental to their basic clerical functions.” *Id.* at 798. Moreover, the absence of weapons, training in security methods, and security attire outweighed the employees’ role in limiting access to the facility. *Id.*

The Board also reasoned that the duty of setting off an alarm in emergencies did not suffice to establish guard status because the employees were “not instructed to take action against a person displaying a weapon.” *Id.* at 799; *see also Boeing Co.*, 328 NLRB at 131 (“[W]e conclude that firefighters were charged with, at most, a reporting function that was largely appurtenant to the substantial demands placed on them by their overall fire- and safety-related responsibilities.”). The Board has also held that employees whose job requires them to observe and report violations can still be considered guards under the Act even though they do not have the power of police, as long as the employees’ job is to observe and report, unlike in *Boeing* where the employees at issue had other, primarily non-guard duties and where asked to report hazards and violations they may have seen while performing their other duties. *See The Wackenhut Corporation*, 196 NLRB 278, 279 (1972).

In this case, because the record demonstrates that the primary function of USOs involve traditional guard duties, I find that the USOs are guards. USOs are tasked with monitoring and controlling access to buildings and the responsibility to screen visitors and their belongings to avoid weapons coming in to buildings, including confiscating weapons from individuals seeking access to the facilities. USOs conduct security patrols, complete activity logs, observe and report security breaches and safety hazards, and monitor security cameras to deter theft, and look out for suspicious activity. USOs enforce the rules of the facilities where they are stationed. USOs investigate property theft in facilities, and accidents in the parking lots, fill out incident reports to submit to their supervisors or to facility managers or the police. USOs escort non-employees when the presence of a guard is required, as demonstrated in connection with parental visitations. The statement of work contained in Employer’s Exhibit 1 makes it clear that the Employer was

contracted by Montgomery County for the specific purpose of providing “a security program” including “comprehensive and visible security coverage.”

USOs are required to obtain a Maryland unarmed guard card, are certified to perform CPR and first aid on both adults and children, and to operate an automated external defibrillator. USOs receive training to use equipment such as magnetometers and hand-held wands for examining visitors prior to their admittance.

The uniforms and equipment used by USOs also suggest guard status. USOs wear special light and dark blue uniforms that include patches indicating their designation as security personnel. USOs are held out to the public as agents of the Montgomery County Police, as evidenced by a badge explicitly stating the USOs’ agency status. USOs carry radios to report violations or to call the police.

The Petitioner argues in its post-hearing brief that the USOs cannot be guards because the original policy consideration and legislative intent of Section 9(b)(3) was to avoid a conflict between guards and employees represented by the same union in the event of strike or labor unrest. Petitioner asserts that because the public employees of Montgomery County are not legally allowed to strike, the conflict envisioned by Congress in creating Section 9(b)(3) is impossible, and therefore the USOs cannot be guards. The principle that Montgomery County employees may not legally strike does not mean that such employees could not strike illegally, in response to which the legislative intent of the purpose for guards would still be intact. Further, the Petitioner’s argument ignores the fact that a strike is not the only situation in which divided loyalties can arise. The Petitioner admits in its brief that the creators of Section 9(b)(3) were also concerned about “labor unrest,” which may indicate something other than a strike.

The Petitioner also argues that the members of the petitioned-for unit cannot be guards because they are not responsible for enforcing rules against Montgomery County employees. This is based on the notion that the Petitioner witness McCarthy testified that she has never filed a report against a Montgomery County employee. The record suggests that USOs in fact possess some responsibilities related to enforcing rules against Montgomery County employees, as McCarthy testified that she did get involved when there was a hit and run car accident involving a Montgomery County employee who was the driver.

The Petitioner cites *Lion Country Safari*, 225 NLRB 969, 969 (1976) for the proposition that the USOs cannot be guards because they do not police public employees. However, the evidence presented at the hearing indicates that there are at least some buildings where the USOs do in fact police public employees, even if not every USO always does so. Moreover, unlike in this case, the uniformed gatemen in *Lion Country Safari* had "...only limited contact with customers...[wore] the same uniform as the employees in the preserve and park..." and did not patrol the preserve. *Id* at 969-70. The USOs in this case are more like the private contract security guards referred to in *Lion Country Safari*, who wore "special uniforms...and patrol[ed] the premises." *Id.* at 970.

As stated above, the record includes no evidence that the position of "guest screener" exists. I conclude that the position of screener does not exist as a separate job classification and is simply one of the tasks performed by the unarmed security guards employed by the Employer.

In conclusion, I find that the record establishes that the employees included in the petitioned-for unit are guards within the meaning of Section 9(b)(3) of the Act. As the parties have stipulated, the Petitioner is not qualified to represent the petitioned-for unit, and I therefore dismiss the petition in this case.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer, BTI Security Inc., a corporation with an office and place of business in Rockville, Maryland, has been engaged in the business of providing security services to private and governmental entities. In conducting its operations during the 12 -month period ending March 31, 20 19, the Employer performed services valued in excess of \$50,000 in states other than the State of Maryland.
3. The Employer is an employer engaged is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is subject to the jurisdiction of the Board.
4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. The parties stipulated, and I find, that the Petitioner currently admits non-guard employees as members, or is affiliated directly or indirectly with an organization that admits employees other than guards as members. Further, the parties stipulated, and I find, that the Petitioner is not qualified within the meaning of Section 9(b)(3) to represent guards.

6. The unit is composed of employees employed as guards, and because the Petitioner is not qualified to represent such a unit, I find that the Petitioner is not qualified to represent the petitioned-for unit.

V. ORDER

IT IS HEREBY ORDERED that the petition in this matter is dismissed.

VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, D.C. 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: June 10, 2019

(SEAL)

/s/ Sean R. Marshall
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